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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

PIT RIVER TRIBE; NATIVE COALITION
FOR MEDICINE LAKE HIGHLANDS
DEFENSE; MOUNT SHASTA
BIOREGIONAL ECOLOGY CENTER;
SAVE MEDICINE LAKE COALITION; and
MEDICINE LAKE CITIZENS FOR
QUALITY ENVIRONMENT,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT;
UNITED STATES DEPARTMENT OF
THE INTERIOR; UNITED STATES
FOREST SERVICE; UNITED STATES
DEPARTMENT OF AGRICULTURE; and
CALPINE CORPORATION,

Defendants.

Consolidated Cases

No. CIV. 2:04-00956-JAM-JFM
No. CIV. 2:04-00969-JAM-JFM

**STIPULATION AND ORDER TO
VACATE COSTS ORDER (DOCKET NO.
96)**

1 WHEREAS Plaintiffs in this case have challenged the legality of the May 1998 continuations of
2 certain geothermal leases entered into between the Bureau of Land Management (“BLM”) and Calpine
3 Corporation (“Calpine”) pursuant to the Geothermal Steam Act, the National Environmental Policy Act,
4 the National Historic Preservation Act, and the federal government’s fiduciary trust obligations to Indian
5 Tribes, as set forth more specifically in Plaintiffs’ Complaint for Declaratory Judgment and Injunctive
6 Relief (“Pit River Tribe II”);

7 WHEREAS, on July 30, 2013, the District Court granted Federal Defendants’ motion for
8 judgment on the pleadings (Docket No. 84), and, on the same day, entered judgment for Federal
9 Defendants and Calpine (Docket No. 85);

10 WHEREAS, on September 25, 2013, Plaintiffs timely filed a notice of appeal to the U.S. Court
11 of Appeals for the Ninth Circuit (“Ninth Circuit”) of the District Court’s July 30, 2013, order and
12 judgment (Docket No. 89);

13 WHEREAS, on November 26, 2013, the District Court entered an order overruling Plaintiffs’
14 objections to the Federal Defendants’ bill of costs and awarding Federal Defendants \$19,851.60 in costs
15 (Docket No. 96);

16 WHEREAS, on January 21, 2014, Plaintiffs timely filed a notice of appeal to the Ninth Circuit of
17 the District Court’s November 26, 2013, order awarding costs (Docket No. 97), which appeal was
18 docketed as Ninth Cir. No. 14-15123;

19 WHEREAS, the United States subsequently recorded abstracts of judgment in Shasta and
20 Siskiyou Counties against Plaintiffs’ real property interests;

21 WHEREAS, in March 2015, Plaintiff Pit River Tribe, through the Kwhan Corporation, deposited
22 \$19,851.60 into the Court’s Registry in order to obtain a release of the Judgment Lien pending
23 adjudication of the the merits appeal and the cost appeal in this matter;

24 WHEREAS, the Ninth Circuit, at Plaintiffs’ request and without opposition from the Federal
25 Defendants or Calpine, has stayed Plaintiffs’ appeal of the District Court’s costs award until and
26 including October 15, 2015;

1 WHEREAS, on July 20, 2015, the Ninth Circuit issued a decision reversing the District Court's
2 July 30, 2013, judgment and remanded the case "for further proceedings consistent with this opinion"
3 (Docket No. 110);

4 WHEREAS, the Ninth Circuit's July 20, 2015, decision requires the District Court to vacate its
5 costs award under well-established Ninth Circuit precedent (see, e.g., Amarel v. Connell, 102 F.3d 1494,
6 1523 (9th Cir. 1996) ("Where a reviewing court reverses a district court's judgment for the prevailing
7 party, however, both the underlying judgment and the taxation of costs undertaken pursuant to that
8 judgment are reversed."));

9 WHEREAS, the parties have agreed that Plaintiffs will voluntarily dismiss their appeal of the
10 District Court's November 26, 2013, costs award within three (3) business days following the District
11 Court's entry of this Stipulation and Order;

12 NOW THEREFORE, the Parties stipulate to the foregoing and respectfully request that the Court
13 enter an order approving this stipulation.

14
15 Respectfully submitted,

16
17 Dated: Oct. 20, 2015

BENJAMIN B. WAGNER
United States Attorney

/s/ David T. Shelledy

19 DAVID T. SHELLDY
20 Assistant United States Attorney

21 Dated: Oct. 20, 2015

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law
School

/s/ Deborah A. Sivas

24 DEBORAH A. SIVAS
25 Counsel for Plaintiffs

1 Dated: 10/20/2015

HOLLAND & HART

2 /s/

3 THOMAS L. SANSONETTI
4 Counsel for Defendant Calpine
5 Corporation

6 **ORDER**

7 Pursuant to the Ninth Circuit's July 20, 2015, decision and the parties' stipulation, this Court's
8 November 26, 2013, order awarding costs to Federal Defendants (Docket No. 96) is hereby VACATED.
9 Within 30 days of the filing of this order, the United States shall file releases of all abstracts of judgment
10 filed in this case which it has not previously released. The Clerk of Court is directed to release to the
11 Kwahn Corporation, on behalf of plaintiff Pit River Tribe, the funds deposited into the Court's registry
12 on March 19, 2015 (as reflected on receipt number CAE200065779).

13 IT IS SO ORDERED.

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15 Dated: 10/21/2015

16 /s/ John A. Mendez

17 HON. JOHN A. MENDEZ
18 United States District Court Judge
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